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### **STATEMENT OF JURISDICTION**

Jurisdiction over this attorney discipline matter is established by Article V, Section 5 of the Missouri Constitution, Supreme Court Rule 5, this Court's common law, and Section 484.040, R.S.Mo. (1994).

## **STATEMENT OF FACTS**

### **Background and Disciplinary History**

Respondent Lawrence Pratt is a forty-one year old attorney who was licensed to practice law in the State of Missouri on October 2, 1992. **App. 44.** At the time of the events charged in the Information, Respondent was employed in the Eastern District Post-conviction Relief Office of the Missouri State Public Defender. **App. 5 (T. 11), 8 (T. 24).** At the time of the hearing before the disciplinary hearing panel on December 19, 2003, Respondent had left the employ of the State Public Defender and was employed in private practice at the law firm of Evans & Dixon. **App. 25 (T. 90).**

Respondent has received prior discipline. In January 2000, the Region XI Disciplinary Committee issued a letter of admonition to Respondent for failing to act with reasonable diligence and promptness in representing a client and in failing to promptly return the legal file to his client. **App. 124-125.** In June 2002, the Committee issued another letter of admonition to Respondent for failing to provide competent, diligent and prompt representation to a client in a domestic relations case. **App. 126-129.**

The complaint in this case was received by the Office of Chief Disciplinary Counsel on January 13, 2003 and referred to the Region XI Disciplinary Committee for investigation on February 10, 2003. The Region XI Disciplinary Committee investigated the matter, found probable cause and voted to issue an Information against Respondent on March 21, 2003. Informant served the Information in this case on Respondent on June 17, 2003. Respondent filed his response to the Information on July 10, 2003. The

Missouri Advisory Committee appointed a Disciplinary Hearing Panel in this case on September 30, 2003. The Panel held its hearing in this matter on December 19, 2003. The Panel issued its Findings of Facts, Conclusions of Law and Recommendation on May 3, 2004. Thereafter, the Panel *sua sponte* issued its Judgment Nunc Pro Tunc on June 7, 2004.

### **Judge Melvyn W. Wiesman Complaint**

David Hammond pled guilty to burglary and stealing in St. Louis County Circuit Court and was sentenced in criminal cause number 00CR-3810. **App. 60, 79.** On July 2, 2001, Hammond timely filed a pro se Motion to Vacate, Set Aside or Correct the Judgment or Sentence pursuant to Rule 24.035 in criminal cause number 01CR-2307. **App. 80.**

On August 2, 2001, Judge Melvyn W. Wiesman appointed the Eastern District/Post-Conviction Relief Office of the State Public Defender to represent Hammond in his Rule 24.035 action and to file any amended motion within sixty days. **App. 106.** On September 28, 2001, Respondent entered his appearance and requested an additional thirty (30) days to file an amended motion for post-conviction relief pursuant to Rule 24.035(g). Judge Wiesman granted the motion and gave Respondent an extension until October 31, 2001 to file the amended motion for post-conviction relief. **App. 100-102.**

On October 23, 2001, Respondent filed a pleading entitled “Notice to Court of Delay in Filing of Amended Motion and Motion to Consider Movant’s Subsequently

Filed Amended Motion as Timely.” **App. 95-98.** In the pleading, Respondent asserted, *inter alia*, the following:

- that the Office of the Eastern Appellate/PCR Division of the Missouri State Public Defender System did not receive notice of the appointment in the case until September 12, 2001;
- that Respondent was assigned to represent Hammond on September 21, 2001;
- that Respondent has reason to believe that there is a meritorious issue requiring review of records not in Respondent’s possession and that Respondent does not anticipate receiving the records until after October 31, 2001;
- that any delay in filing the amended motion is not the fault of Hammond and is “solely attributable to counsel.”

Due to the delay in receiving the records, Respondent requested that the Court consider the subsequently filed amended motion required under Rule 24.035(g) to be timely filed. The pleading was verified and sworn to by Respondent.

On October 31, 2001, Judge Wiesman denied Hammond’s motion to consider the subsequently filed Amended Motion timely. The judge, however, ruled that the sixty day period to file the amended motion pursuant to Rule 24.035 would begin to run as of September 7, 2001, the date that Respondent received notice of the appointment. **App. 94.** The effect of the ruling was to give Respondent an extension until November 7, 2001 to file the required amended motion on behalf of Hammond.

In addition, Judge Wiesman set a testimonial hearing on Hammond’s Motion for PCR relief for January 4, 2002. **App. 93.**

On December 6, 2001, Respondent filed a pleading entitled “Second Notice to Court of Delay in Filing of Amended Motion and Motion to Consider Movant’s Subsequently Filed Amended Motion as Timely.” **App. 89-92.** In the pleading, Respondent asserted, *inter alia*, the following:

- Respondent restated his belief that a meritorious issue existed which required a review of medical records not yet received;
- Respondent again stated that the delay in filing the Amended Motion pursuant to Rule 24.035(g) was solely attributable to Respondent; and
- Respondent again requested that the Court consider the subsequently filed Amended Motion timely filed.

The pleading was again verified and sworn to by Respondent. Judge Wiesman denied the motion. **App. 91.**

On January 4, 2002, Judge Wiesman held an evidentiary hearing on Hammond’s original motion for post-conviction relief. At the commencement of the hearing, Respondent filed a Verified Motion for Continuance in which he stated that he had received in excess of 560 pages of medical records regarding Hammond. He requested a sixty (60) day continuance of the evidentiary hearing in order to allow him to finish collecting medical records and to have Hammond evaluated by a mental health professional. **App. 86-88, 109-110.** The Court denied the motion for continuance. **App. 85, 115.** At the evidentiary hearing, Respondent presented no evidence on behalf of his client. **App. 115.**

On January 8, 2002, Judge Wiesman entered his Findings of Fact, Conclusions of Law, Order, Judgment and Decree of Court on Movant's Motion to Vacate, Set Aside or Correct the Judgment or Sentence Pursuant to Rule 24.035. **App. 79-84.** In the Order, the Court found that Respondent never filed or tendered an Amended Motion for Relief pursuant to the requirements of Rule 24.035 and that he never filed or tendered a statement setting out facts demonstrating what actions were taken by Respondent to determine if all facts and claims were alleged in Movant's pro se motion as required by Rule 24.035. In addition, the Court made the following specific finding with regard to Respondent's conduct in representing Hammond:

“An issue not raised by the Motion, which this court believes needs addressing is the failure of appointed counsel to comply with the requirements of Rule 24.035(e). The Rule requires that ‘Counsel shall ascertain whether sufficient facts supporting the claims are asserted in the motion and whether the movant has included all claims known to the movant as a basis for attacking the judgment and sentence. If the motion does not assert sufficient facts or include all claims known to the movant, counsel shall file an amended motion that sufficiently alleges the additional facts and claims. If counsel determines that no amended motion shall be filed, counsel shall file a statement setting out facts demonstrating what actions were taken to ensure that (1) all facts supporting the claim are asserted in the pro se motion and (2) all claims known to the movant are alleged in the pro se motion. The statement shall be presented to the movant prior to filing. The movant may file a reply to the statement not later than ten days after the statement is filed.’



Appointed counsel for Movant failed to comply with these provisions of the Rule. Instead, appointed counsel sought to extend the time for filing an Amended Motion beyond the periods specifically delineated in Rule 24.035 contrary to the court's specific rulings to the contrary. Counsel was put on notice that this court did not believe the case of *State v. Sanders*, 807 S.W.2d 493 (Mo banc 1993) authorized such an extension where the purported need for extension was not due to inadvertence or neglect by counsel. This court finds that counsel's process was a conscious decision as a matter of trial strategy. It was not the result of abandonment of Movant by counsel but rather resulted from a specific conscious choice by Movant's appointed counsel to attempt to circumvent the limited times for filing amendments to the pro se motion under the requirements of Rule 24.035." **App. 74-75.**

The Court denied Hammond's pro se motion to set aside.

On February 19, 2002, Respondent filed a Notice of Appeal on behalf of Hammond of the motion court's denial of the pro se Rule 24.035 motion. On December 24, 2002, the Court of Appeals for the Eastern District of Missouri found that Respondent had legally abandoned his client, reversed the court's denial of the Rule 24.035 motion and remanded the case to the motion court for the appointment of new counsel to represent Hammond and to file an appropriate amended Rule 24.035 motion. The Court of Appeals found that Respondent's approach to the case was "ethically questionable." In addition, the Court found "puzzling" that Respondent would spend his time filing "notices" explaining why some future amended motion containing meritorious issues was

delayed rather than simply presenting the meritorious issues in a timely amended motion as required by Rule 24.035. **App. 119-122.**

### **Continuing Legal Education Compliance**

At the hearing before the Disciplinary Hearing Panel on December 19, 2003, Informant submitted evidence that Respondent had not complied with the Court's Rule 15 MCLE reporting requirements for the reporting years 1996-1997, 1997-1998 and 1998-1999. **App. 123.** Respondent testified that he had never been notified of any delinquency and that he was "current" and "on time" with his annual MCLE reports. **App. 23 (T. 83).** The Disciplinary Hearing Panel directed Respondent to provide evidence of MCLE compliance for the years in question. **App. 24 (T. 85-86).** Respondent never provided the panel with any such evidence.

On May 3, 2004, the Disciplinary Hearing Panel issued a decision finding that Respondent violated Rules 4-1.3 and 4-3.2 in failing to act with reasonable diligence and promptness in representing David Hammond by failing to file an Amended Motion regarding post-conviction relief. The Panel also found that Respondent failed to meet his MCLE reporting requirements for the reporting years 1996-1997, 1997-1998 and 1998-1999 and thereby violated Rule 4-5.5(c). The Panel recommended that Respondent receive an admonition for these violations. On June 7, 2004, the Panel issued a "Judgment Nunc Pro Tunc" containing the same findings and conclusions as the May 3 decision, but with the recommendation that Respondent receive a public reprimand.

On August 12, 2004, the parties filed a Motion to Submit Concurrence in Decision of Disciplinary Hearing Panel with the Court. On November 4, 2004, this Court entered

an Order directing the parties to notify the Clerk regarding the status of Respondent's MCLE compliance. On November 15, 2004, the Office of Chief Disciplinary Counsel filed an Affidavit of Christopher Janku, Director of Programs for the Missouri Bar, confirming that Respondent remained MCLE delinquent for the reporting years 1996-1997 and 1997-1998. Mr. Janku further stated that Respondent did not report hours for the 1998-1999 reporting year.

On November 23, 2004, the Court rejected the proposed discipline and ordered that the briefing schedule be activated. The record was filed on January 14, 2005.

**POINT RELIED ON**

**I.**

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT  
BECAUSE RESPONDENT VIOLATED RULES 4-1.3 AND 4-3.2 IN  
THAT HE NEGLIGENTLY FAILED TO COMPLY WITH THE  
REQUIREMENTS OF RULE 24.035 AND THE ORDERS OF THE  
MOTION COURT TO FILE AN AMENDED POST-CONVICTION  
MOTION ON BEHALF OF HIS CLIENT.**

Rule 4-1.3

Rule 4-3.2

A.B.A. Standards for Imposing Lawyer Sanctions, Standard 4.43 (1991 ed.)

*In re Barr*, 605 S.E.2d 536 (S.C. 2004)

*In re Gordon*, 747 A.2d 1188 (D.C. 2000)

**POINT RELIED ON**

**II.**

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT FOR VIOLATING RULE 4-5.5(c) BY NOT FILING AN ANNUAL REPORT OF CONTINUING LEGAL EDUCATION CREDIT HOURS AND FAILING TO PROVIDE ANY PROOF THAT HE COMPLETED HIS CLE OBLIGATIONS AS REQUIRED BY RULE 15.06 FOR REPORTING YEARS 1996-1997, 1997-1998 AND 1998-1999 AND PRACTICING LAW DURING SAID YEARS.**

Rule 15

Rule 4-5.5(c)

*In re Shelhorse*, 147 S.W.3d 79 (Mo. banc 2004)

A.B.A. Standards for Imposing Lawyer Sanctions, Standard 7.3 (1991 ed.)

## ARGUMENT

### I.

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE RESPONDENT VIOLATED RULES 4-1.3 AND 4-3.2 IN THAT HE NEGLIGENTLY FAILED TO COMPLY WITH THE REQUIREMENTS OF RULE 24.035 AND THE ORDERS OF THE MOTION COURT TO FILE AN AMENDED POST-CONVICTION MOTION ON BEHALF OF HIS CLIENT.**

The record demonstrates that Respondent violated the express provisions of Rule 24.035 and multiple orders of the motion court by purposefully failing to file an amended motion for post-conviction relief on behalf of his client. The procedure for prosecuting a motion for post-conviction relief under Rule 24.035 is explicit and mandatory. Thus, Rule 24.035(e) provides in relevant part as follows:

“When an indigent movant files a pro se motion, the court shall cause counsel to be appointed for the movant. . . . If the motion does not assert sufficient facts or include all claims known to the movant, counsel **shall** file an amended motion that sufficiently alleges the additional facts and claims.” **App. 53-56 (emphasis supplied).**

Rule 24.035(g) succinctly sets forth the time frame within which appointed counsel must file an amended motion for post-conviction relief. Rule 24.035(g) provides in relevant part as follows:

“ . . . If no appeal of the judgment sought to be vacated, set aside, or corrected is taken, the amended motion **shall** be filed within sixty days of the earlier of: (1) the date both a complete transcript consisting of the guilty plea and sentencing hearing has been filed in the trial court and counsel is appointed or (2) the date both a complete transcript has been filed in the trial court and an entry of appearance is filed by any counsel that is not appointed but enters an appearance on behalf of movant. . . . The court may extend the time for filing the amended motion for one additional period not to exceed thirty days.” **App. 53-56 (emphasis supplied).**

The trial court gave Respondent as much leeway as it was permitted to do under the mandatory timelines set forth in Rule 24.035 by back-dating the date of Respondent’s appointment and by granting Respondent a single thirty day extension to file the amended motion on behalf of his client. Instead of filing the amended motion, however, Respondent filed multiple “Notices” advising the motion court that he had been delayed in filing an amended motion and curiously requesting that a subsequently filed amended motion be deemed timely filed. Respondent knew or should have known that the trial court had no authority under Rule 24.035 to grant such an unusual and unauthorized request. Respondent exacerbated his lack of diligence by failing to present any evidence at the January 4, 2002 hearing on his client’s post-conviction relief motion. A long delay in the client’s post-conviction remedy and a significant waste of judicial economy resulted from Respondent’s inaction and lack of diligence.

In his two “Notices” to the motion court and his “Motion for Continuance,” Respondent asserted that a meritorious issue for post-conviction relief existed, that his

client was suffering from severe mental illness and that Respondent was still collecting and reviewing medical records regarding his client's mental state. If this were truly the case, it was incumbent upon Respondent to file an amended motion within the mandatory timelines set forth in Rule 24.035. Respondent could have timely filed the required amended motion raising his client's alleged mental condition as a basis for post-conviction relief and continued to gather the necessary evidence in anticipation of the trial court's hearing on the amended motion. The Court of Appeals so noted when it found that Respondent had abandoned his client and remanded the case to the trial court for the appointment of new counsel and additional Rule 24.035 proceedings. Significantly, the Court of Appeals agreed with the trial court that Respondent's approach to the case was "ethically questionable."

While there is no Missouri case directly on point, Informant notes that courts from other jurisdictions have issued public reprimands or their equivalent in similar cases involving attorneys who failed to diligently represent their clients in post-conviction relief proceedings. Thus, in *In re Barr*, 605 S.E.2d 536 (S.C. 2004), the Supreme Court of South Carolina publicly reprimanded appointed counsel who failed to diligently and competently represent his client in a post-conviction relief proceeding based on the mistaken belief that the client was no longer incarcerated. Similarly, in *In re Gordon*, 747 A.2d 1188 (D.C. App. 2000), the District of Columbia Court of Appeals publicly censured appointed counsel who failed to diligently represent his client by seeking post-conviction relief, specifically a reduction in his client's sentence.



Informant submits that Respondent was negligent in violating the provisions of Rule 24.035 and in failing to diligently represent his client in the post-conviction relief proceedings.<sup>1</sup> Respondent's negligent conduct caused injury to his client in that a decision on the post-conviction relief motion was significantly delayed. A reprimand is generally appropriate under Section 4.43 of the ABA Standards for Imposing Lawyer Sanctions (1991 ed.) when a lawyer is negligent, does not act with reasonable diligence in representing his client and such conduct causes injury to the client. Aggravating factors present in this case are two prior disciplinary offenses (**See App. 124, 126**). Rules 9.22(a)(g), ABA *Standards for Imposing Lawyer Sanctions* (1991 ed.). Under the ABA Standards and case law from other jurisdictions a reprimand is the baseline sanction, however, the aggravating factors may increase the sanction.

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<sup>1</sup> This is not a case where the attorney totally and purposefully ignored the requirements of Rule 24.035 and the orders of the motion court. If such were the case, suspension might be appropriate. Respondent in the case at bar attempted, albeit inappropriately, to protect the interests of his client by filing "Notices" and seeking a continuance of the hearing on his client's pro se Rule 24.035 motion.

## ARGUMENT

### II.

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT FOR VIOLATING RULE 4-5.5(c) BY NOT FILING AN ANNUAL REPORT OF CONTINUING LEGAL EDUCATION CREDIT HOURS AND FAILING TO PROVIDE ANY PROOF THAT HE COMPLETED HIS CLE OBLIGATIONS AS REQUIRED BY RULE 15.06 FOR REPORTING YEARS 1996-1997, 1997-1998 AND 1998-1999 AND PRACTICING LAW DURING SAID YEARS.**

This Court has recently confirmed the importance of complying with Continuing Legal Education requirements to assure the public that lawyers are keeping themselves informed on the constant changes in the law. The Court has also found that a lawyer who fails to complete required CLE courses and to file annual reports of compliance has violated Rule 4-5.5(c) and is subject to discipline. *In re Shelhorse*, 147 S.W.3d 79 (Mo. banc 2004).

The record evidence in this case establishes that Respondent failed to file an annual report of CLE credit hours as required by Rule 15 for reporting years 1996-1997, 1997-1998 and 1998-1999. **App. 123.** Respondent testified before the Disciplinary Hearing Panel that “as far as I know I’ve filed my reports when I was supposed to with the CLE credits I was supposed to.” **App. 23 (T. 83).** The Panel requested that Respondent provide it with written evidence of such compliance. **App. 23 (T. 83-84).** Following the hearing, Respondent failed to provide the requested documentary evidence

of compliance and the Panel found that Respondent violated Rule 4-5.5(c). There is no evidence in this record demonstrating that Respondent completed the CLE hour requirements from 1996-1999.

On November 4, 2004, this Court entered an Order directing the parties to notify the Clerk regarding the status of Respondent's MCLE compliance. On November 15, 2004, the Office of Chief Disciplinary Counsel filed an Affidavit of Christopher Janku, Director of Programs for the Missouri Bar, confirming that Respondent remained MCLE delinquent for the reporting years 1996-1997 and 1997-1998. Mr. Janku further stated that Respondent did not report hours for the 1998-1999 reporting year, but was not listed as delinquent on the required list sent to the Chief Disciplinary Counsel pursuant to Rule 15.06 because he was not in good standing with regard to his enrollment dues.<sup>2</sup>

Respondent's continuing failure to acquire and report the continuing legal education credits required by Rule 15 constitutes a violation of Rule 4-5.5(c) and warrants discipline. In the *Shelhorse* case, the Court issued a public reprimand to the attorney given the fact that Shelhorse had no prior discipline and his conduct was not shown to have directly harmed a client or the public.

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<sup>2</sup> It is Informant's understanding that during that time period, the Missouri Bar assumed that an attorney who did not pay his enrollment dues was considered a non-practicing attorney (see Rule 15.05(c)), since he was not entitled to practice law. Therefore they did not place that attorney on the CLE delinquent list referred to OCDC (see Rule 15.06(f)).

In this case, Respondent violation of the Bar's CLE requirements is not as extensive as the CLE violation present in the *Shelhorse* case. Respondent failed to meet his CLE requirements for a limited period of time several years ago and then failed to provide any evidence to the Disciplinary Hearing Panel and this Court that he was MCLE compliant during those years. Informant notes that Respondent received two prior admonitions in 2000 and 2002 and that both involved a failure to act with reasonable diligence and promptness on behalf of clients in violation of Rule 4-1.3. In addition, the misconduct described in Count I above constitutes a third instance of violating the duty to diligently represent clients. According to ABA Standard 7.3 a public reprimand is appropriate for negligent conduct violating a duty owed to the profession. The fact that Respondent has not taken any corrective action with regard to the prior CLE reporting years could be considered an aggravating factor which would increase the overall sanction.

## **CONCLUSION**

Respondent negligently violated Rule 24.035 and failed to diligently represent his client in the post-conviction relief proceedings pending before the Honorable Judge Melvyn W. Wiesman in St. Louis County Circuit Court. In addition, Respondent violated Rule 4-5.5(c) by failing to acquire and report the continuing legal education credits required by Rule 15. These violations, coupled with the aggravating circumstances of multiple prior disciplinary offenses and Respondent's refusal to acknowledge the wrongfulness of his conduct, evidence a disregard of his duties to the legal profession. This Court should at a minimum, publicly reprimand Respondent.

Respectfully submitted,

OFFICE OF  
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ATTORNEY FOR INFORMANT

**CERTIFICATE OF SERVICE**

I hereby certify that on this 18<sup>th</sup> day of February, 2005, two copies of Informant's Brief and a diskette containing the brief in Microsoft Word format have been sent via First Class mail to:

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Attorney for Respondent

\_\_\_\_\_  
Maridee F. Edwards

**CERTIFICATION: RULE 84.06(c)**

I certify to the best of my knowledge, information and belief, that this brief:

1. Includes the information required by Rule 55.03;
2. Complies with the limitations contained in Rule 84.06(b);
3. Contains 3,982 words, according to Microsoft Word, which is the word processing system used to prepare this brief; and
4. That Norton Anti-Virus software was used to scan the disk for viruses and that it is virus free.

\_\_\_\_\_  
Maridee F. Edwards